

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Empowering Consumers to Avoid Bill Shock)	CG Docket No. 10-207
)	
Consumer Information and Disclosure)	CG Docket No. 09-158

Notice of proposed rulemaking

REPLY COMMENTS OF SEAN MURPHY
case of AT&T \$9100 mobile bill shock (\$200/min. data)

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I. Introduction

My involvement in this forum is the result of my \$9100 bill shock from AT&T¹. As a consumer working to pay bills, I do not have revenue from millions of customers funding a legal staff to argue my business interests in this forum. I have only myself, evenings and weekends to fulfill a moral obligation to protect others from what I have experienced.

I respectfully urge the Federal Communications Commission (“FCC”) to move forward with the rules proposed in the NPRM². Furthermore, I urge the FCC to include language addressing latency requirements of these alerts. I point out that latency could be specified in cost rather than time units. Lastly I encourage the FCC to adopt additional regulation that will lead to improvements and standardization of wireless carrier account management features, in consideration of deficiencies, inconsistencies, and in some cases, absence of consumption monitoring and limiting tools.

The much heralded self regulatory approach of industry is inadequate, because motivation and competition to provide new products and services to grow shareholder value, exceeds the motivation to provide companion services to provide adequate visibility and control of new offerings. The Exhibit “A” attachment to this filing, is offered as an example illustrating this point of a new product with provided with inadequate consumption visibility for the consumer.

II. Regarding Comments of AT&T Inc.

I found that AT&T presented a a more objective case than Verizon³; AT&T garnered my respect by not wasting toner on first amendment corporate rights, and made accurate points concerning the challenges of real-time alerts.

¹ Comments of Sean R. Murphy, CG Docket No. 10-207, at 2 (filed January 9, 2011)

² Empowering Consumers to Avoid Bill Shock, Notice of Proposed Rulemaking, 25 FCC Rcd 14625 (2010) (“NPRM”).

³ Comments of AT&T Inc., CG Docket No. 10-207, (filed January 10, 2011)

The NPRM did not address any real-time requirement of the proposed usage alerts, a deficiency in the NPRM. I got burned because of real-time issues (delay in reporting consumption led to 45 minute video consumption). It clearly isn't worth investing millions to solve real-time issues to protect consumers from overages of only \$5. There is a trade. Investment in addressing real-time requirements should be proportional to the potential cost to the consumer of latency in reporting. For voice at \$0.20 per minute this is not as significant at data that can run \$200.00 per minute or more for HD video.

If it costs too much to solve the real time problem, then carriers should instead invest in provisions for limiting the rate of consumption. If my data pipe was soda straw size then my loss by the time I got notification would be greatly reduced. I don't want a ultra mega max data pipe if my data is going to cost me \$19.50 per megabyte⁴. Please. If companies are liable for consumer overages incurred prior to delivery of notification, then natural appropriate motivation will exist to manage pipe size and this consumer problem will be adequately addressed.

III. Reflection on Industry and the First Amendment Right to Free Speech

The comments filed by at least one carrier and association regarding the application of First Amendment protection to industry was enlightening⁵. Statements were made that suggested it would be a violation of First Amendment rights, to require a corporations to issue text message alerts warning of an impending overages⁶. Your average bloke could easily extend this interpretation to say the First Amendment protects corporations from having to say anything. If they don't have to issue a text message, then they shouldn't have to issue a billing statement, a list of charges, or even certain contract terms. Following this yellow brick road we might find truth-in-billing is unconstitutional.

I strongly disagree with this interpretation; the proposed message alert is business and not political in nature, and therefore is no more a violation of the first amendment than is the government placing requirements upon business contracts, or mandating that banks provide written notice before foreclosure action etc. Let's be realistic.

A review of the filings by corporations in this forum are a clear reminder that responsibility number one for corporations, is value to the stockholder. Making money and selling product is #1. Everything else, is second. It is against the financial interest of these corporations to provide tools that will reduce product consumption. This is why the proposed regulations are needed.

⁴ Cost of international data to Guatemala without a plan, reference AT&T web site, which confusingly lists prices in Kilobytes not Megabytes.

⁵ See Comments of Verizon Wireless, CG Docket No. 09-158 / 10-207 (filed January 10, 2011) p 32-42; Comments of CTIA – The Wireless Association, CG Docket No. 09-158 / 10-207 (filed January 10, 2011) p 41

⁶ See Comments of Verizon Wireless, p 37

IV. Regarding the Nielson Company Statistics Filed December 2010⁷

These statistics were oft quoted throughout the many industry comments by most of the carriers as evidence there is no problem. The Nielson statistics identified SOME problem, but sliced and diced and removed this, that and the other, until there was VERY LITTLE problem, which was summarized as NO PROBLEM by the time the carriers wrote about it. It was interesting to see how THE PROBLEM was numerically whittled away, with a VAST CLASS of people (the 61 Million pre-paid wireless consumers)⁸ (or 1 in 5 Americans) scarcely mentioned, other than to say they weren't worthy of mention. Note, this vast class of pre-paid wireless consumers is OVER HALF of the 115M subscribers⁹ the study says is eligible for bill shock. We are so quick to dismiss the prepaid consumer; they don't have much money. Yet lets remember, many of these people are pre-paid BECAUSE of past bill shock experience! (no evidence, just based on my friends and family on the pre-paid plan).

It rubs me that the Nielson statistics are presented as though they are objective, but when you go through the data, there is clearly spin on the data. Example is slide 11; *"About 1% of Americans experience significant overages in any given year, similar to their regular bill"*. This is large bold font, top of page, clearly making a point. Why are they diluting the bill shock percentile by including americans that don't have cell phones, in this statistic? What is the point of this, from a company that specializes in statistics?

The Nielson statistics make an arbitrary definition of significant. A different definition of "significant overage" would yield dramatically different results in this report. Furthermore, voice overages were experienced by 13.5% of the consumers (page 9). This number doesn't appear anywhere, you have to add up all the smaller numbers on this page. They quote a smaller number (9.9%) that only happen once or twice ("a rare event") which I guess means it shouldn't count. AND add to that data overages (page 10) that hit 18% of consumers. But 18% doesn't appear on the slide, you again have to add up the sliced and diced count in the table. AND nowhere in the presentation do they tell you what VOICE PLUS DATA overages were. Worst case it would be 18% + 13.5% or 31.5% of consumers. But some of these unfortunate souls got BOTH voice and data overages, so the real number should be less, but the Nielson study doesn't identify this useful piece of information that is the basis of this entire discussion, so there is nothing I can quote here.

It is remarkable that on page 9 and 10 we were able to add up around 31.5% of the 115M subscribers with a voice OR data overage, and by the time we turn to page 11, it becomes only 1% of Americans, using Nielson's definition of "significant overage". Isn't any overage significant?

The other challenge is the credibility of this data; only summary results of the study were filed; there is no white paper filed, containing requisite detail information to gauge impartiality, that answers questions like, how were the panelists screened? Was the survey provided in any languages other than English? What margin of error is attributed to the fact that only the first month of data collected included people with a new carrier experience?

⁷ Comments of The Nielsen Company, CG Docket No. 09-158/10-207 (filed December 17, 2010)

⁸ *Id.*, p 5

⁹ *Id.*, p 5, "Potentially affected consumer accounts = 115 million"

What about people that solved their overage problems online before the statement was issued? What about the accurate but funny math on slide 6 that says only 39% of subscribers could have bill shock; funny math because it takes the 5 phone numbers I have and counts me as one subscriber because I have a family plan.

And lastly and most significantly, How did Nielson define an overage? Without concise definition of “overage” the entire presentation is meaningless. Is data consumption without a data package counted as an overage? Is it counted as regular data? Is the definition related to the statement on the last chart, “Nielsen does not classify non-package transactional calls as overage”? What does this mean? If my kid rang up \$100 of data charges watching a video when I don’t have a data plan (this happened to me), was that counted as an overage? This is extremely relevant. What if my exchange student rang up \$250 in text messages when I didn’t have a texting plan? (this bit me too) Would the \$9100 bill shock international data I got for 45 minutes of video my kid watched count as an overage since I didn’t have an overseas data plan?

Without a clear explanation or a white paper explaining the metrics in detail, it is difficult to know what the Nielson data means. Without knowing what it means, it doesn’t mean anything, yet it is quoted as fact, though we aren’t clear *fact of what*.

Nearly half the Nielsen paper is devoted to distracting discussion of how often the same person goes into overage, culminating in an assertion that people who go into overage regularly are unlikely to be surprised, and thus overage isn’t a shock, so bill shock doesn’t exist for those people, and it is a rare event for the rest of the people, so, basically there is no such thing as bill shock. Nielson’s benefit here is they take the 30%(?) of the people that ARE getting bill shock, and slice it down by number of shocks per month so that the 15% doesn’t even appear on the chart and all you see is 0.1% and 3.3% and so on. (slide 9).

It is extremely disappointing and a challenge to the credibility of the industry that the full set of facts is not presented in an open fashion, as one would find in a respected scientific peer reviewed journal. Surely a company as well respected as the Nielson company is capable of producing such a white paper, and such a paper could easily present requisite facts without divulging proprietary process information. The absence of such filing can only lead one to conclude that it would not be supportive of industry’s case, and in consideration of a general tone of bias, one may not be able to trust the Neilson filing as genuinely impartial.

V. Summary

I am writing this because I believe the regulation in the NPRM is legitimately in the best interest in the consumer, and because the consumer is disadvantaged when they take on a large corporation over something unfair in their bill.

Unlike mom and pop businesses of days long past where you knew your customers and your partners, businesses have reached a scale unfathomable only 50 years ago. It seems the FCC is the only recourse available to effect change of any scale in corporate policies. I believe the FCC’s presence was instrumental in obtaining the \$9100 credit of my AT&T bill shock.¹⁰ The annual legal department budget of these large corporations exceeds my lifetime

¹⁰ See Comments of Sean R. Murphy, p 2

earnings by orders of magnitude. Consumers are in no position to take on large corporations on their own. If this is not enough, the current attempt by wireless providers to legally eliminate class actions (the last consumer recourse) is yet another shocking grab at total control.

I offer the attachment to this filing as an example of the current self-regulatory environment. This consumer issue was never resolved to my satisfaction, because I do not have the power nor resources the corporation does. I believe any rational person would find the attached information (Exhibit A) of my dispute with Verizon as an example of something that should not have transpired; yet in response to receipt of the attached slide set, Verizon returned less than half of my money that I thought they should return under the circumstances. I never complained to the FCC. It didn't occur to me. The dollar value to me wasn't worth it, yet despite the paltry dollar sum Verizon couldn't refund even half my money disputed; perhaps out of fear of precedent and implicit admission of fault. Hence I switched carriers. I do not know if this deceptive billing is still occurring.

The FCC proposed alert notification will help consumers avoid surprises, help them avoid unfair treatment, and help them spend their money how they want to spend it. I appreciate this opportunity to file this citizen's response.

Respectfully Submitted,

//s// Sean R. Murphy

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